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12	SUPERIOR COURT OF STATE OF ARIZONA		
13	COUNTY OF YAVAPAI		
13	STATE OF ARIZONA, CASE NO. V1300CR201080049		
	,		
15	Plaintiff, vs.	Hon. Warren Darrow	
16	JAMES ARTHUR RAY,	DIVISION PTB	
17	Defendant.	DEFENDANT JAMES ARTHUR RAY'S NOTICE OF INTENT AND REQUEST	
18		TO INTRODUCE IMPEACHMENT EVIDENCE OF CONVICTION OF	
19		CRIME(S) PURSUANT TO ARIZ. R. OF EVID. 609, RE: RICK ROSS AND FAWN	
20		FOSTER	
21			
22	Defendant James Arthur Ray, by and through undersigned counsel, hereby requests that		
23	this Court allow him to introduce for purposes of impeachment evidence of witnesses Rick Ross's		
24	prior felony conviction and Fawn Foster's four prior felony convictions. This motion is		
25	supported by the following Memorandum of Points and Authorities.		
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	DEFENDANT'S NOTICE OF INTENT AND REQUEST TO INTRODUCE 609 IMPEACHMENT EVIDENCE		

MEMORANDUM OF POINTS AND AUTHORITIES

Subject to certain limitations, Rule 609 of the Arizona Rules of Evidence provides that "[f]or the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime *shall* be admitted if elicited from the witness or established by public record, if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect, and if the crime (1) was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted *or* (2) involved dishonesty or false statement, regardless of the punishment. Ariz. R. Evid. 609(a) (emphasis added). Under Rule 609(b), if more than 10 years have elapsed from the date of the conviction, the conviction is admissible if the Court determines that the probative value of the evidence substantially outweighs the prejudicial effect. *Id.* 609(b).

Rick Ross

On April 2, 1976, witness Rick Ross was convicted of Conspiracy, Second Degree, to Commit Grand Theft, a felony, in Maricopa County Superior Court Cause No. CR89445. The probative value of this conviction substantially outweighs its prejudicial effect. As explained in the Defendant's Response to the State's Motion *in Limine* regarding Ross, filed this same date, Mr. Ray is constitutionally entitled to a full and complete cross-examination of Ross. This right encompasses Mr. Ray's ability to elicit for the jury's review a full and complete account of Ross's qualifications as an expert and credibility. "Where the witness is a non-defendant, the trial court must not only consider the provisions of Rule 609(a) but must also consider the rights of a defendant to confront the witnesses against him." *State v. Conroy*, 131 Ariz. 528, 530 (App. 1982) (holding that it was reversible error for the trial court to exclude evidence of witness's prior felony conviction, where the defense theory was that witness was not credible; witness's rape conviction was germane to his credibility). *See also Gasiorowski v. Hose*, 182 Ariz. 376, 381 (App. 1995) ("Trial courts must give great latitude for full and complete cross-examination of

¹ The Defense will provide certified copies of the entries of convictions for the Court's review prior to trial.

expert witnesses."). This Court should therefore allow Mr. Ross's felony conviction to be admitted in evidence for purposes of impeachment.

Fawn Foster

Fawn Lee Foster, a witness to be called in the State's case-in-chief, has been convicted of four (4) felonies, as follows:

- On July 14, 1997, Fawn Lee Foster was convicted of Aggravated Driving Under the Influence, a class 4 felony, in Yavapai County Superior Court Cause No. CR9970176. The date of offense was June 1, 1997.
- On February 8, 2006, Fawn Lee Foster was convicted of Possession of Marijuana, a class 6 felony, and Possession of Drug Paraphernalia, a class 6 felony, in Yavapai County Superior Court Cause No. CR820050156. The date of the offenses was February 6, 2005.
- On November 13, 2006, Fawn Lee Foster was convicted of Possession of Drug Paraphernalia, a class 6 felony, in Yavapai County Superior Court Cause No. CR820060728. The date of the offense was October 9, 2006.

The probative value of these four convictions, only one of which is more than ten years old, substantially outweighs their prejudicial effect.

"Generally, in cases involving prior felony convictions," the party seeking to introduce the conviction "need only come forward with the date, place, and nature of the prior conviction in order to satisfy its initial burden of showing probative value." *State v. Williams*, 144 Ariz. 433, 438 (1985). Moreover, as noted above, Mr. Ray is constitutionally entitled to a full and complete cross-examination of the State's witnesses, including the ability to elicit information that will allow the jury to fully review a witness's credibility. *See Conroy*, *supra*, 131 Ariz. at 530. This Court should therefore allow Fawn Foster's felony convictions to be admitted in evidence for purposes of impeachment.

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1 2 3	DATED: February 3 2011	MUNGER, TOLLES & OLSON LLP BRAD D. BRIAN LUIS LI TRUC T. DO
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5		
6		By
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8 9	Copy of the foregoing delivered this 3 rd day of February, 2011, to:	
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11	Yavapai County Attorney	
12	Prescott, Arizona 86301	
13	by M WWW	
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